TAN SOO HAR v. PUBLIC PROSECUTOR

[F.C. (Suffian L.P., Lee Hun Hoe C.J. (Borneo) and Ali F.J.) March 8, 1975]

[Kuala Lumpur — Federal Court Criminal Appeal No. 21 of 1974]

Criminal Law and Procedure — Appeal — Sentence — Not unreasonable or manifestly excessive — Firearms (Increased Penalties) Act, 1971.

In this case the appellant had pleaded guilty to a charge of resisting arrest by shooting at the police with an automatic pistol. He was convicted and sentenced to eighteen years' imprisonment.

Held: as there was nothing on the record to show that the sentence imposed was unreasonable or manifestly excessive, the appeal against sentence must be dismissed.

FEDERAL COURT.

Paramjit Singh for the appellant.

Lamin bin Haji Yunos (Deputy Public Prosecutor) for the respondent.

Ali F.J. (read by **Suffian L.P.**): The appellant pleaded guilty to a charge of resisting arrest by shooting at the police with an automatic pistol. He was convicted and sentenced to 18 years' imprisonment to take effect on the expiry of his sentence of 8 years which he was still serving. His appeal against sentence is on the ground that it is unreasonable and manifestly excessive.

Since the maximum sentence allowed by law is 20 years a sentence of 18 years does seem severe. But is it unreasonable and manifestly excessive?

In passing sentence the trial judge took into account that the appellant has a string of previous convictions which do not speak well for him. He has not shown any sign of repentence despite his long years in prison. On the other hand when threatened with arrest he had no hesitation in using a firearm which was later found on him when arrested.

He told the court that he had acted foolishly.

In view of the crime situation in this country particularly in Ipoh where the learned judge has lived for many years and in view of the clear intention of the Legislature in passing the Firearms (Increased Penalties) Act No. 37 of 1971 it must be obvious that the appellant cannot expect leniency from the court. As there is nothing on record to show that the sentence imposed is unreasonable or manifestly excessive we are unable to see how this court can interfere.

We would dismiss the appeal.

Appeal dismissed.

Solicitors: *Seenivasagam & Sons.*

ACME CANNING SENDIRIAN BERHAD v. LEE KIM SENG

[F.C. (Gill C.J. (Malaya), Ong Hock Sim and Wan Suleiman F.JJ.) March 8, 1975]

[Penang — Federal Court Civil Appeal No. 62 of 1974]

Employment — Claim for damages against former employee — Employee employed as foreman — Alleged breach of implied condition of service — Failure to exercise due skill and care in the supervision and production of canned foodstuffs.

In this case the appellants bought an action against the respondent, a former employee, for damages for negligence. It was alleged that the respondent, who was employed as a foreman in the factory, had failed to exercise due skill and care in the supervision and production of canned foodstuffs. The action was dismissed in the High Court and the appellants appealed.

Held, dismissing the appeal: the learned trial judge was correct in holding that there was no evidence of lack of supervision on the part of the respondent and no evidence to show that he was responsible for the defects in the products of the factory.

FEDERAL COURT.

S. Kulasegeran for the appellants.

Ariffin bin Haji Daud for the respondent.

Ong Hock Sim F.J.: This appeal is from the judgment of Chang Min Tat J. dismissing the appellants' claim against the respondent, a former employee, for special damages in the sum of $46,294.08¢ as well as for general damages for negligence, interests and costs.

In the Statement of Claim in Civil Suit No. 61 of 1973 filed on March 23, 1973, it was alleged, and I quote:—

"4. Further and in addition thereto the plaintiff states that from about 1969 till 20th November, 1972, the defendant was *employed* by the plaintiff *as a foreman* in the factory, *thereby being responsible* for the supervision and proper canning of tin foodstuffs.

5. It was an *implied condition of service* that the defendant shall use all due skill and care in the supervision and *production* of canned foodstuffs.

6. The defendant in breach of the said condition *failed,* refused and/or neglected *to exercise due skill and care in the canning and/or supervision of canning of foodstuffs* that the plaintiff suffered loss, damage and expense as a result of the said negligence by the defendant.

Particulars of Negligence

The defendant failed, refused and/or neglected to exercise due care in the canning of foodstuffs so that the following defects were found:—

(a) Cans were unable to withstand incubation at specified temperatures.

(b) Cans blew up on transportation and incubation.

(c) Cans emitted odours upon analysis and/or incubation.

(d) Cans did not contain the specified ingredients both in quality and quantity.

(e) Insects were found in certain cans."

Particulars of the loss and damage resulting from rejection by the Ministry of Defence under this paragraph showed a total of 46,872 tins valued at $16,294.08¢ which was confirmed by the appellants in evidence-in-chief at page 16 but in cross-examination the total number of cans was reduced by more than half.